



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: APRIL 25, 2023

IN THE MATTER OF:

Appeal Board No. 627726

PRESENT: JUNE F. O'NEILL, MEMBER

In Appeal Board No. 627725, an appeal by the claimant was processed to the Appeal Board from the decision of the Administrative Law Judge (A.L.J. Case No. 022-25855) filed January 12, 2023, insofar as the decision sustained the initial determination holding the claimant ineligible to receive benefits, effective May 30, 2022 through July 17, 2022, on the basis that the claimant was not totally unemployed and/or had earnings that exceeded the statutory limitation.

In Appeal Board Nos. 627726 and 627727, the claimant appeals from the decisions of the Administrative Law Judge (A.L.J. Case Nos. and 022-25859) filed January 12, 2023, insofar as the decisions sustained the initial determinations charging the claimant with an overpayment of \$2,772.00 in benefits recoverable pursuant to Labor Law § 597 (4); reducing the

claimant's right to receive future benefits by 48 effective days; and charging a civil penalty of \$415.80 on the basis that the claimant made willful misrepresentations to obtain benefits.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There were appearances by the claimant and on behalf of the employer and the Commissioner of Labor.

In Appeal Board No. 627725, it now appears that the appeal was processed through inadvertence, as the record contains no actual request for an appeal from the Judge's decision.

In Appeal Board No. 627725, the appeal is dismissed, and the decision of the Administrative Law Judge in 022-25855 continues in effect.

The claimant is denied benefits with respect to the issue decided herein.

With respect to Appeal Board Nos. 627726 and 627727, our review of the record reveals that the case should be remanded to hold a hearing. The claimant has contended that she did not receive the benefits at issue. The claimant was not offered an opportunity to request an adjournment to produce her bank records or debit card records for the account to which her benefits were deposited. As these documents may be necessary to obtain a complete record upon which a decision may be based, a further hearing is necessary to afford the claimant an opportunity to produce her bank records or debit cards at a hearing. If these documents are outside the control of the claimant, the claimant may apply to the Judge for a subpoena to obtain such evidence. The request for a subpoena should be made as soon as possible following receipt of this decision. In addition, the claimant should be questioned in detail regarding the questions she was asked when certifying for benefits, her responses to those questions, and the reason for her responses to the certification questions.

Now, based on all of the foregoing, it is

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues of recoverable overpayment, willful misrepresentation and civil penalty, only, upon due notice to all parties and their representatives; and it is further

ORDERED, that the Notice of Hearing shall identify as the Purpose of Hearing the remanded issues of recoverable overpayment, willful misrepresentation and civil penalty, only; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and so that at the end of the hearing all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the remanded issues only, which shall be based on the entire record in this case,

including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

JUNE F. O'NEILL, MEMBER